

Senate Bill No. 760

CHAPTER 790

An act to amend Section 6603 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2012. Filed with
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 760, Alquist. Sexually violent predators: evaluations.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of State Hospitals. If the evaluators agree, then a petition for civil commitment may be filed.

Existing law specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right by the attorney petitioning for commitment to demand a jury trial and request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, existing law authorizes this attorney to request the State Department of State Hospitals to perform replacement evaluations. Existing law defines when an evaluator is no longer available to testify for this purpose.

This bill would include, with a specified exception, an independent professional or state employee who has served as the evaluator who has resigned or retired and has not entered into a new contract to continue as an evaluator in the case within the definition of an evaluator who is no longer available to testify.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access

to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of State Hospitals of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

(i) Nothing in subparagraph (D) of paragraph (2) of subdivision (c) shall be construed to affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect communities from a public safety threat, it is necessary that this act take effect immediately.